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November 24, 2003

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Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
Room TW-A325  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

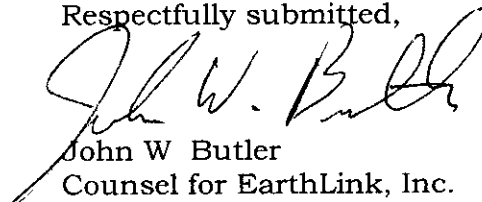
RE: EarthLink, Inc. Reply Comments in WC Docket No. 03-211;  
Vonage Holdings Corporation Petition for Declaratory  
Ruling Concerning an Order of the Minnesota Public  
Utilities Commission

Dear Ms. Dortch:

Enclosed are one original and four copies of the reply comments of EarthLink, Inc. in the above-referenced matter. Also enclosed is an extra copy marked "stamp and return." I ask that this copy be stamped as acknowledgement of your receipt and returned our messenger.

Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

  
John W. Butler  
Counsel for EarthLink, Inc.

cc: Janice M. Myles, Wireline Competition Bureau (2)  
Qualex International (1)

EX-100 10/24/03 044  
LST:ALG

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Vonage Holdings Corporation

Petition for Declaratory Ruling  
Concerning an Order of the  
Minnesota Public Utilities  
Commission

WC Docket No. 03-211

REPLY COMMENTS OF EARTHLINK, INC.

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Earl W. Comstock  
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David N. Baker  
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November 24, 2002

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**In the Matter of**

**Vonage Holdings Corporation**

**Petition for Declaratory Ruling  
Concerning an Order of the  
Minnesota Public Utilities  
Commission**

**WC Docket No. 03-211**

**REPLY COMMENTS OF EARTHLINK, INC.**

EarthLink, Inc. ("EarthLink"), by its undersigned counsel, files these reply comments in the above-captioned proceeding. For the reasons stated below, EarthLink respectfully urges the Commission to deny the petition of Vonage Holdings Corporation ("Vonage") without prejudice and encourages the Commission to promptly initiate a comprehensive proceeding to address the outstanding regulatory issues associated with voice-over-Internet-protocol services ("VoIP").

Vonage's petition seeks a declaratory ruling preempting an order of the Minnesota Public Utilities Commission ("MPUC") that required Vonage to comply with certain Minnesota state laws applicable to providers of telephone service.<sup>1</sup> By order dated October 16, 2003, the United States District Court for the District of Minnesota issued a permanent injunction prohibiting the application of the MPUC's order.<sup>2</sup> By virtue of that court order, Vonage has already received in a different forum all of the relief that it seeks from the

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<sup>1</sup> Vonage Petition at 1.

<sup>2</sup> *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-2587 (D. Minn. Oct. 16, 2003).

Commission. Accordingly, there is nothing for the Commission to decide, and the petition should be denied as moot.

Under the circumstances presented by the Vonage petition, EarthLink respectfully suggests that the public interest would best be served by addressing the issues raised in the Vonage petition as part of a generally applicable rulemaking proceeding that would provide certainty to the states, the public, and the industry as a whole, rather than simply providing an answer with respect to one service provider in one state, which is the best that can be had from a decision on the Vonage petition. In addition to the fact that the Commission has already acknowledged the need for a comprehensive proceeding on this matter and stated its intent to initiate such a proceeding, there are several additional reasons why it makes sense to address VoIP through a general rulemaking. First, as noted above, Vonage has already obtained from the District Court all of the relief that it seeks from the Commission. Second, the factual record in the present proceeding is both sparse and disputed, even with respect to Vonage's service, let alone the VoIP services offered by other providers.<sup>3</sup> Third, the legal arguments so far advanced in the Vonage proceeding tend to rely most heavily on cases and definitions decided or adopted before 1996.<sup>4</sup> Many of the applicable regulatory definitions were superseded or substantively amended by the statutory definitions added by Congress in the Telecommunications Act of 1996,<sup>5</sup> and any analysis of this relatively new service should include a careful analysis of the effect of the 1996 Act on older cases that address analogous situations.

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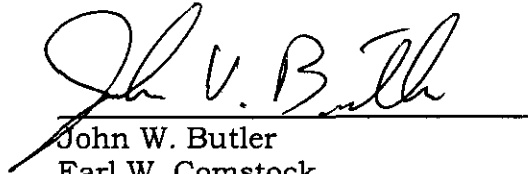
<sup>3</sup> See, e.g. Comments of Minnesota Department of Commerce at 1, 22.

<sup>4</sup> See, e.g., Vonage Petition at 12-14 and cases cited therein.

<sup>5</sup> See, e.g., Comments of Time Warner Telecom, Inc. at 5 n.17 (noting that statutory definition of "information service" does not include code or protocol conversion).

For all of these reasons, EarthLink believes that the Vonage petition should be denied without prejudice and the important issues contained therein addressed in a more comprehensive and appropriately structured proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Butler", is written over a horizontal line.

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